IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

WP(C).No. 30629 of 2006(U)

OP.EL.5/2005 of MUNI-MAGI COURT, DEVICOLAM
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PETITIONER:

AJITHA PRAMOD, W/O.PRAMOD,
PUNNANIKATTU HOSUE, CHITHIRAPURAM P.O.,
PALLIVASAL VILLAGE, DEVIKULAM TALUK.

BY ADV. SRI.V.K.SUNIL
SRI.AJEY THOMAS

RESPONDENTS:

TULASI BHAI KRISHNAN,
D/O.KRISHNAN, KAITHAYANICKAL HOUSE,
ANACHAL P.O., DEVIKULAM.

BY ADV. SRI.K.JAJU BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the I.A.No.696/06 in O.P.(Ele) No.5/05 of the Munsiff's Court, Devikulam.

Ext.P2:- True copy of the witness schedule produced by the respondent along with Ext.P1.
Ext.P3:- True copy of the order dated 10/04/2006 in I.A.696/06 in O.P.(Ele) No.5/05 of the Munsiff Court, Devikulam.

Ext.P4:- True copy of the I.A.No.751/06 filed by the petitioner before the Munsiff's Court, Devikulam.

Ext.P5:- True copy of order dated 23/08/2006 in I.A.No.751/06 in O.P.(Ele) 5/05 of the Munsiff's Court, Devikulam.

Ext.P6:- True copy of the judgment dated 16.11.2001 of this Honourable Court in O.P.No.18000/01.

Respondent Exhibits:-
Ext.R1(a), Atrue copy of Election Petition No.5/05 filed by the respondent before the Munsiff Court, Devikulam dated 24.10.05.

Ext.R1(b), true copy of affidavit in support of the Election petition filed by the respondent before the Munsiff Court, Devikulam in Election Petition 5/05 dated 24.10.06.

Ext.R1(c), true copy of objection filed by the petitioner in Election Petition No.5/05 before the Munsiff Court dated 16.1.06.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO. 30629 OF 2006

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Dated this the 4th day of January,2007

JUDGMENT

Petitioner is the successful candidate in the election conducted to Ward No.8 of Pallivasal Grama Panchayath. Respondent filed O.P.(Ele)No.5/05 to set aside the election of petitioner. Case of the respondent was that the election is vitiated for various reasons, including double voting. Respondent filed Ext.P1 application along with Ext.P2 list of witnesses to issue summons for their examination as well as to produce documents. The petition was objected to by the petitioner. Under Ext.P3 order learned Munsiff allowed the application and issued summons. Petitioner filed Ext.P4 application to review that order. Under Ext.P5 order, learned Munsiff dismissed the application. Exts.P3 and P5 are challenged in this petition filed under Article 227 of Constitution of India.

2. When the writ petition was admitted as per order dated 20.11.06 this court permitted the trial court to issue summons to witness Nos. 1 to 44 and only issuance of summons to witnesses 45 to 48 were directed to be deferred. Learned counsel appearing for petitioner and respondent submitted that inspite of the direction of this court dated 20.11.06, witnesses who were summoned were not examined. The arguments of learned counsel appearing for petitioner was that witness No.45 was sought to be summoned to produce the voters list, counterfoils and used ballot papers and witness No.47 was sought to be summoned to produce voters list, counterfoils and used ballot papers and witness No.48 was sought to be summoned to produce voters list, counterfoils and used ballot papers and postal votes and the affidavit accompanying Ext.P1 application does not show reasons whatsoever to call for the documents and in such circumstances, learned Munsiff should not

have allowed the application and Ext.P3 order is to be quashed. Learned counsel relying on Ext.P6 judgment of this court in O.P.18000/01 argued that in that case also, an order passed by the Munsiff summoning similar documents without filing an affidavit showing the reasons for which the documents were summoned and it was set aside by this court and the decision squarely applies to the facts of the case and in such circumstance, the direction to summon witnesses 45 to 48 is to be quashed.

3. Learned counsel appearing for the respondent argued that when the election petition was filed contending that the election was vitiated for double voting, the counterfoils of the voters who allegedly cast double voting are relevant and material and no secrecy could be claimed on them and in the election petition all the details were furnished and in such circumstance, there is no reason to interfere with that order.

4. On hearing learned counsel appearing for petitioner and respondent, it is seen that though respondent has specifically pleaded the details in the election petition, in the affidavit accompanying Ext.P1 application the reason why documents are to be summoned from witnesses 45 to 48 were not disclosed at all. The affidavit also does not show that for the reasons stated in the election petition, the documents are to be summoned. In such circumstances, the reason which weighed with this court, to set aside similar order passed by Munsiff in Ext.P6 judgment, applies to the facts of the case. Ext.P3 order to the extent of summoning witnesses 45 to 48 alone is set aside. Respondent is granted liberty to file proper application showing the reasons why documents are to be summoned. If such an application is filed, learned Munsiff has to pass an appropriate order in accordance with law without any delay.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006